

§ 839.1203

(b) Your request for waiver must state why you believe waiver of repayment is appropriate and include any evidence that supports your request.

§ 839.1203 Can OPM compensate me for my losses if I did not take any legal action against my employer, but did incur some expenses because of a qualifying retirement coverage error?

(a) The FERCCA allows OPM, in its sole discretion, to compensate you for a monetary loss that is a direct and proximate result of your retirement coverage error.

(b) Monetary losses include payments of additional Social Security taxes, payment of additional retirement deductions, and other out-of-pocket expenses that you incurred because of a retirement coverage error.

(c) You must substantiate your claim for losses with any evidence that supports your request.

(d) OPM cannot pay you for:

(1) Claimed losses related to forgone contributions and earnings under the TSP, other than lost earnings on make-up contributions to the TSP as provided in subpart J of this part; and

(2) Claimed losses related to any other investment opportunities.

§ 839.1204 On what basis will OPM review claims under this subpart?

(a) OPM will base its decision on only the written record, including all of your submissions and other documentation in OPM's possession.

(b) At OPM's discretion, OPM may request your employer to provide an administrative report. The report may include:

(1) A description of the retirement coverage error;

(2) A statement as to whether a settlement or other court-ordered award was made;

(3) The employer's recommendation for resolution of the claim; and

(4) Any other information your employer believes OPM should consider.

(c) The burden of proof that the criteria for approving a reimbursement of expenses is on you.

5 CFR Ch. I (1–1–09 Edition)

§ 839.1205 Does the Director of OPM review the claims?

The Associate Director for Retirement and Insurance and his or her delegates have the authority to perform the Director's actions, as set out in this subpart (see section 2208 of the FERCCA).

§ 839.1206 How do I submit a claim under this subpart?

(a) No specific form is required. Your request must be in writing and contain the following information:

(1) It must describe the basis for the claim and state the dollar amount you seek to receive;

(2) It must include your name, address, and telephone number;

(3) It must include the name, address, and telephone number of your current or last employer;

(4) It must be signed by you; and

(5) It must include any information you believe OPM should consider, such as cancelled checks or other evidence of amounts you paid.

(b) Send your claim to: Office of Personnel Management, Retirement and Insurance Service, ATTN: FC Section, Washington, DC 20415–3200

Subpart M—Appeal Rights

§ 839.1301 What if my employer determines my error is not subject to these rules?

(a) Your employer must provide you with a written decision. The decision must include the reason for the decision, and notice of your right to appeal the decision to the MSPB.

(b) If your employer determines that it cannot waive the time limit for making an election under § 839.612, the decision must inform you of your right to ask OPM to review the decision. OPM will advise you in writing of your appeal rights following its review of your employer's decision.

§ 839.1302 What types of decisions can I appeal?

(a) You can appeal to the MSPB a decision that affects your rights and interests under this part, except an OPM decision under subpart L (see § 839.1303). Some examples of decisions are: